



**Attorney General
Betty D. Montgomery**

November 26, 1996

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Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: *In the Matter of Amendment of
the Commission's Rules to
Permit Flexible Service
Offerings in the Commercial
Mobile Radio Services, W T
Docket 96-6.*

Dear Mr. Caton:

Enclosed please find the original and ten copies of the **In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services** in the above referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

ANN E. HENKENER
Assistant Attorney General
Public Utilities Section
180 E. Broad St., 7th Floor
Columbus, Ohio 43266-0573

Enclosure

cc: International Transcription Services, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Amendment of the Commission's Rules to) WT Docket 96-6
Permit Flexible Service Offerings in the)
Commercial Mobile Radio Services)

**EXECUTIVE SUMMARY OF THE
INITIAL COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

The Public Utilities Commission of Ohio (PUCO) objects to any reclassification of wireless local loop to (CMRS). The PUCO observes that the Federal Communications Commission (FCC) proposal on this matter is inconsistent with and a significant departure from its original interpretation of the 1993 Omnibus Budget and Reconciliation Act, where the FCC determined that fixed wireless services should not be classified as CMRS and would remain subject to local jurisdiction (FCC CMRS Second Report and Order).

The PUCO maintains that since Congress excluded CMRS from the definition of local exchange service, if fixed local wireless services - in particular wireless local loop service - were reclassified as CMRS, CMRS providers in competing for local exchange customers would realize all of the deregulatory benefits and freedoms inherent to the 1996 Act and the individual state's local competition guidelines, but none of the associated obligations. (For example, in Ohio all competing LECs are required to meet the PUCO's minimum telephone service standards. This would have the

effect of favoring fixed wireless loop services in the establishment of the competitive local market - a result not intended by Congress.

In the event the FCC continues to believe that fixed wireless services, in particular wireless local loop, should be reclassified as CMRS (*arguendo*), the PUCO observes that the FCC should affirm its previous interpretation in its CMRS Second Report and Order, GN Docket No. 93-252, that states retain jurisdictional authority over any incidental wireless services (including wireless local loop) provided in conjunction with local exchange services. That is, if fixed wireless local loop is provided in conjunction with local exchange service, the states have the jurisdiction to regulate that carrier as a LEC, regardless of the technology the LEC is utilizing to provide the local loop. The PUCO observes that such an affirmation on behalf of the FCC will limit local exchange company deployment of services over CMRS spectrum in an attempt to avoid Title II common carrier regulation.

The PUCO understands the FCC concern that the reclassification of fixed wireless services from local to CMRS regulation may need to be addressed on a case-by-case basis. The PUCO believes that entities providing fixed location wireless service should be required to first petition the local state jurisdiction to reclassify its fixed location wireless services to to CMRS. The FCC could establish broad minimum boundaries upon which it could guide the state commissions in making their determinations.

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INITIAL COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

The Public Utilities Commission of Ohio (PUCO) hereby submits its initial comments pursuant to the Federal Communications Commission's (FCC's) First Report and Order and Further Notice of Proposed Rulemaking (FNPRM) in WT Docket No. 96-6 (In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services), which was adopted by the Commission on August 1, 1996. In its FNPRM the FCC proposes to supplement the record developed thus far in this investigation concerning the regulation of fixed location cellular services. Comments in response to the this FNPRM are due at the FCC on or before November 27, 1996.

BACKGROUND

In its Commercial Mobile Radio Services (CMRS) Second Report and Order in GN Docket No. 93-252 (In the Matter of Implementations of Sections 3(n) and 332 of the Communications Act), the FCC interpreted the statutory definition of mobile service to include "all auxiliary services provided by

mobile services licensees," but then distinguished between fixed point to point services and those services provided in a mobile mode. The FCC further observed that local exchange services delivered by radio link may be provided using architectures consisting of mobile, fixed, or a combination of those components.

On August 1, 1996, the FCC released a FNPRM in WT Docket No. 96-6 seeking additional comments on developing guidelines for determining when fixed location wireless services should fall within the scope of commercial mobile radio service (CMRS) regulation (as opposed to Title II common carrier regulation). The FCC observes in its FNPRM that the record thus far in this proceeding shows strong support for allowing the provision of fixed location wireless services by licenses operating in the CMRS bands. As a result, the FCC determined, among other things, that fixed location wireless services, excluding broadcast services, are permissible service offerings on spectrum allocated for broadband and narrowband PCS. The FCC observes that potential fixed wireless services include not only wireless local loop (i.e., fixed wireless links to connect residences, apartment buildings, office buildings, and other structures with wireline local exchange networks), but also fixed wireless architectures that can link end users to cellular switches, and remote base stations. The FCC believes that giving CMRS providers greater flexibility to provide these fixed services, whether separately or in conjunction with other mobile services, will stimulate wireless competition in the local exchange market, and encourage innovation in the development of wireless service.

DISCUSSION

The FCC notes that, based on its review thus far in this investigation, it is premature to attempt to arrive at a final comprehensive determination regarding the regulatory treatment of the various types of fixed wireless services that may be offered by CMRS licenses. FNPRM at Paragraph 47. The FCC states that it believes a uniform approach to reclassification of these services is premature at this time. NPRM at Paragraph 47. The FCC, therefore, proposes to refine the approach set forth in its NPRM in this docket by seeking comments on additional guidelines for determining when fixed wireless services may fall within the scope of CMRS regulation. FNPRM at Paragraph 47.

The PUCO objects to any reclassification of wireless local loop to CMRS. The PUCO observes that the FCC proposal on this matter is inconsistent with and a significant departure from its original interpretation of the 1993 Omnibus Budget and Reconciliation Act, where the FCC determined that fixed wireless services should not be classified as CMRS and would remain subject to local jurisdiction (FCC CMRS Second Report and Order). The FCC has suggested several interpretations of "mobile" and its use (or non-use) in the Act. However, the fact remains that the plain language of the Law does not, in general, include the concept of fixed wireless loops within the definition of mobile service and therefore, CMRS regulation does not apply.

The FCC seeks comment on the Cellular Telecommunications Industry Association's (CTIA's) arguments that the FCC has substantial discretion under the 1993 Omnibus Budget Reconciliation Act to define "mobile services." FNPRM at Paragraph 50. CTIA indicates that this authority stems from the interpretation of the term "mobile service" that refers to "any

subsequent proceeding." NPRM at Paragraph 50. Therefore, CTIA believes that this language allows the FCC to establish alternative definitions of mobile services in the successor proceedings. NPRM at Paragraph 50. The PUCO submits that CTIA's belief that the phrase "any successor proceeding" permits the FCC to establish alternative definitions of "mobile service" is belied by the placement of these words in the clause. "Any successor proceeding" merely refers to any other proceeding regarding the licensing of PCS providers other than the proceeding entitled, "Amendment to the Commission's Rules to Establish New Personal Communications Services." It is not meant to broaden the scope of the definition of mobile service.

The PUCO maintains that since Congress excluded CMRS from the definition of local exchange service, if fixed local wireless services - in particular wireless local loop service - were reclassified as CMRS, CMRS providers in competing for local exchange customers would realize all of the deregulatory benefits and freedoms inherent to the 1996 Act and the individual state's local competition guidelines, but none of the associated obligations. (For example, in Ohio all competing LECs are required to meet the PUCO's minimum telephone service standards.) This would have the effect of favoring fixed wireless loop services in the establishment of the competitive local market - a result not intended by Congress. The PUCO further finds support for its position on this matter in the National Association of Regulatory Utility Commissioners' (NARUCs') previous comments filed in this docket, which also opposed the reclassification of fixed wireless services since it could result in inconsistent policies for the provision of similar services by different type of local carriers. The PUCO agrees with NARUCs' supporting observation that state regulation of CMRS differs significantly from the regulation of local wireline services. Indeed, in Ohio

there is little rate regulation of new local exchange companies. Only in instances of allegations of undue discriminatory pricing or pricing below cost does the PUCO foresee exercising significant rate regulation over new market entrants.

In the event the FCC continues to believe that fixed wireless services, in particular wireless local loop, should be reclassified as CMRS (*arguendo*), the PUCO observes that the FCC should affirm its previous interpretation of the 1993 Omnibus Budget Reconciliation Act (CMRS Second Report and Order, GN Docket No. 93-252) that states retain jurisdictional authority over any incidental wireless services (including wireless local loop) provided in conjunction with local exchange services. That is, if fixed wireless local loop is provided in conjunction with local exchange service, the states have the jurisdiction to regulate that carrier as a LEC, regardless as to the technology the LEC is utilizing to provide the local loop. The PUCO observes that such an affirmation on behalf of the FCC will limit local exchange company deployment of services over CMRS spectrum in an attempt to avoid Title II common carrier regulation. Finally, regarding local exchange service, the PUCO notes that it possess the requisite authority to require LECs to deploy wireline facilities within their respective local exchange service territories if it believes fixed wireless local loop service is not meeting a LEC's subscriber's needs.

The PUCO understands the FCC concern that the reclassification of fixed wireless services from local to CMRS regulation may need to be addressed on a case-by-case basis. NPRM at Paragraph 53. The PUCO believes that entities providing fixed location wireless service should be required to petition first the local state jurisdiction to reclassify its fixed location wireless services to to CMRS. Moreover, the FCC could establish broad minimum

boundaries upon which could guide the state commissions in making their determinations. This evaluation criteria could be similar to that identified by the FCC at Paragraph 55 of its FNPRM. For example, states could consider the relative mobility of the mobile station used in conjunction with the fixed service, whether the fixed service is provided in conjunction with any local exchange services, whether the fixed service is part of a larger package that includes only other mobile services, etc.

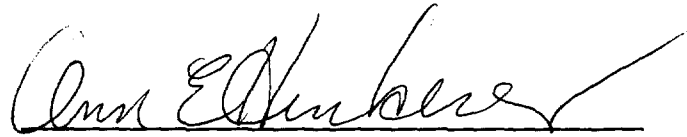
CONCLUSION

In closing, the PUCO wishes to thank the FCC for the opportunity to file comments in this docket.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General of Ohio

DUANE W. LUCKEY
Section Chief

A handwritten signature in cursive script, appearing to read "Ann E. Henkener", written over a horizontal line.

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